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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

C.G.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F070927

(Super. Ct. No. 14CEJ300119)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDING; petition for extraordinary writ review. Mary Dolas,  
Commissioner.

Brenda Hook, for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and David F. Rodriguez, Deputy County  
Counsel, for Real Party in Interest.

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\* Before Levy, Acting P.J., Detjen, J. and Franson, J.

Petitioner C.G., the 15-month-old subject of these dependency proceedings, seeks writ review (Cal. Rules of Court, rule 8.452) of the juvenile court's refusal to remove her from her de facto parents and place her with her maternal aunt.<sup>1</sup> She contends the juvenile court erred in allowing the de facto parents to assume an adversarial role and in violating the relative placement preference under Welfare and Institutions Code section 361.3, subdivision (a).<sup>2</sup> We deny the petition.

### **STATEMENT OF THE CASE AND FACTS**

C.G. came to the attention of the Fresno County Department of Social Services (department) in early February 2014, when she was born at 24 weeks gestation and her mother (hereafter "mother") tested positive for illicit drugs. C.G. was placed on life support and admitted to the neonatal intensive care unit (NICU). She remained hospitalized until mid-May 2014.

Several days after giving birth, C.G.'s mother was discharged from the hospital. She subsequently made no attempt to visit C.G. or contact the medical staff to ascertain C.G.'s condition.

On April 10, 2014, after multiple failed attempts to reach mother, the department placed a protective hold over C.G. and filed a dependency petition on her behalf alleging mother's substance abuse placed C.G. at a substantial risk of neglect. (§ 300, subd. (b).)

On April 17, 2014, C.G.'s maternal aunt, Katy B., contacted the department and requested visitation and placement of C.G. On May 2, Katy again requested placement. Three days later, the department submitted an expedited application for relative placement.

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<sup>1</sup> The juvenile court issued this ruling at a contested six-month review hearing at which the juvenile court set a Welfare and Institutions Code section 366.26 hearing as to C.G. Thus, we deemed the matter to be a writ proceeding.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

On May 12, 2014, Katy rescinded her application for relative placement after the background check revealed she had a warrant for failing to appear on a two-year-old petty theft charge.

On May 13, 2014, the juvenile court adjudged C.G. a dependent child as alleged in the petition. The next day, the department placed C.G. with foster parents Mr. and Mrs. P. Mrs. P. was one of the NICU nurses caring for C.G.

In June 2014, the juvenile court ordered reunification services for mother and set the six-month review hearing in November 2014. Also in June, Katy cleared her warrant by completing a first time offender's class.

In July 2014, Katy submitted an application for relative placement and began weekly supervised visits with C.G. In August 2014, a social worker assessed Katy's home for placement. Katy lived with her boyfriend of 15 years, Frank, and their 13-year-old daughter and eight-, six- and three-year-old sons in a two-bedroom apartment. By that time, Katy and her family were having weekly unsupervised visits with C.G. Katy said the visits were going well and the entire family played with C.G. during the visits. In November 2014, Katy was notified that her home was approved for placement.

In its report for the six-month review hearing, the department recommended the juvenile court terminate mother's reunification services because she had not participated in any of her court-ordered services or visited C.G. since her birth. The department also reported that C.G. appeared to be developing in an age appropriate manner but should be evaluated given her premature birth. It informed the court that Mr. and Mrs. P. and Katy were willing to provide C.G. a permanent home but did not state its preference. The department recommended the court set a permanency planning hearing under section 366.26 and proceed with a plan of adoption.

In November 2014, the juvenile court continued the six-month review hearing until December 10, 2014. The court also declared mother's whereabouts unknown.

On December 8, 2014, social workers met with Katy and Frank and Mr. and Mrs. P. for the purpose of creating a plan to transition C.G. to Katy's home by December 22. Mr. and Mrs. P. stated they wanted to adopt C.G. and expressed concern about the transition plan.

On December 10, 2014, Mr. and Mrs. P. filed a request to be appointed C.G.'s de facto parents. The next day, they appeared for the continued six-month review hearing. Minor's counsel required more information on the appropriateness of placing C.G. with Katy and asked for a contested hearing on the issue. Mrs. P. told the court that C.G. was at "great risk for growth [and] developmental delay" and she feared any attempt to transition her would be detrimental to her. She asked the court to stop the department from removing C.G. from their home. She also told the court that she had submitted a request to be deemed C.G.'s de facto parent. The court expressed concern that the department's assessment of C.G.'s developmental status differed from that of Mrs. P. The court ordered the department not to move C.G. without a court order and set a contested hearing for January 2015.

On January 6, 2015, the juvenile court convened the contested six-month review hearing. The court also had Mr. and Mrs. P.'s request for de facto parent status. Mr. and Mrs. P. had retained counsel and were represented at the hearing by an attorney appearing for counsel. The attorney requested a one-week continuance, explaining that they were under the impression that C.G. would remain with Mr. and Mrs. P. but that she had learned prior to the hearing that was no longer the case. Minor's counsel objected to a continuance, arguing Mr. and Mrs. P. did not have standing to participate in the proceedings and to request a continuance. She said she was in agreement with the department to place C.G. with Katy. The court granted the request for de facto parent status, finding Mr. and Mrs. P. satisfied the criteria. The court also granted a continuance to allow retained counsel to appear and represent Mr. and Mrs. P.'s position.

On January 20, 2015, an investigator met with Katy, Frank and their children at their home. Katy told the investigator that she was employed full-time at a job she had held for two years. Frank was not employed but was attending college at night. She said she and Frank did not have any child welfare history and Frank did not have a criminal history. She explained where everyone would sleep and what the child care arrangements would be for C.G. The investigator reported that the apartment was appropriately furnished and that the housekeeping was adequate.

In January 2015, the department filed an addendum report, recommending the juvenile court place C.G. with Katy. The department reported that Katy consistently visited C.G. and Katy was attentive and nurturing. Katy said that C.G. fit in well with the family and appeared to be happy when she was with them.

On February 3, 2015, at the contested six-month review hearing, the juvenile court heard argument on the issue of C.G.'s placement. The attorney for Mr. and Mrs. P. argued that C.G.'s visits with Katy and her family were detrimental to her. C.G. had regressed in her speech as a consequence and was going to be seeing a speech therapist. In addition, C.G. needed help eating and she was not walking even though she was nearly one year old. Minor's counsel argued that Katy visited C.G. in the hospital and never wavered from her request for placement. She also argued C.G. could maintain familial relationships and traditions if she were placed with Katy.

At the conclusion of the hearing, the juvenile court terminated the mother's reunification services and set a section 366.26 hearing. The court also found C.G.'s interests were best served by allowing her to remain with Mr. and Mrs. P. and declined to remove her from their home.

This petition ensued.<sup>3</sup>

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<sup>3</sup> In the petition, appellate counsel asks this court to issue a writ of review under Code of Civil Procedure section 1070 et seq. We decline to do so, having denied this request by order issued on February 10, 2015.

## DISCUSSION

### *De Facto Parents*

C.G. contends the juvenile court abused its discretion in granting Mr. and Mrs. P. standing to challenge her placement of C.G. with her maternal aunt. We find no evidence that the juvenile court granted them such standing.

A “de facto parent” is “a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period.” (Cal. Rules of Court, rule 5.502(10).) De facto parent status confers standing to participate as a party in disposition hearings and subsequent hearings in which the status of the dependent child is at issue. The de facto parent may be present at the hearing, be represented by retained counsel and present evidence. (Cal. Rules of Court, rule 5.534(e).)

“The purpose of conferring de facto parent status is to ‘ensure that all legitimate views, evidence and interests are considered in dispositional proceedings involving a dependent minor.’” (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 256.) A de facto parent, however, is not entitled to custody of the child or to “any degree of independent control over the child’s destiny whatsoever.” (*In re Kieshia E.* (1993) 6 Cal.4th 68, 82 (*Kieshia E.*)).

Nevertheless, the interest of the de facto parent in the child is a substantial one. (*In re B.G.* (1974) 11 Cal.3d 679, 693.) By exercising his or her procedural rights to appear, participate, and present evidence, a de facto parent may “assert and protect their own interest in the companionship, care, custody and management of the child.” (*Ibid.*) Further, the de facto parent “may also present a custodial alternative, which should not be ignored in a juvenile dependency proceeding.” (*Kieshia E., supra*, 6 Cal.4th at p. 77.)

Thus, a de facto parent’s standing is confined to appearing represented by counsel and presenting evidence for the purpose of assisting the juvenile court in making

decisions about the child. A de facto parent does not have standing to raise issues absent a showing his or her personal rights are affected by the ruling. (See *In re Frank L.* (2000) 81 Cal.App.4th 700, 703.)

In this case, there is no evidence the juvenile court conferred on Mr. and Mrs. P. standing beyond that to which they were entitled. The issue of C.G.'s placement was raised by minor's counsel at the hearing in December 2014, when she requested a contested hearing. At the next hearing in January 2015, the juvenile court granted Mr. and Mrs. P. de facto parent status and continued the hearing so that their retained attorney could appear. It was this act of granting a continuance that C.G. contends allowed Mr. and Mrs. P. to participate in excess of their role as de facto parents. She argues they did not have standing to request one. She does not, however, explain why an attorney representing a de facto parent is forbidden from requesting a continuance. Nor does she show the juvenile court continued the hearing without good cause.

We conclude the juvenile court allowed Mr. and Mrs. P. to participate in the proceedings within the limitations placed on them by their de facto status.

### ***Relative Placement***

C.G. contends the juvenile court abused its discretion in not placing her with Katy as required by section 361.3, subdivision (a). We disagree.

Section 361.3, subdivision (a) sets forth the relative placement preference. It provides: "In any case in which a child is removed from the physical custody of his or her parents ..., preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative." In determining whether placement with the relative is appropriate, subdivision (a) sets forth various factors the court and department should consider. (§ 361.3, subd. (a)(1)-(8).)

"Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) Thus, the statute does not establish an evidentiary presumption that placement with a relative is in

the child's best interest. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320.) Rather, it ensures that a relative seeking placement is assessed and considered favorably, subject to the juvenile court's consideration of the suitability of the relative's home and the best interests of the child. (*Ibid.*) The preference applies at the dispositional hearing and thereafter "whenever a new placement of the child must be made." (§ 361.3, subd. (d).)

C.G. points out that Katy requested relative placement early in the proceedings and were it not for the department's delay in processing her request, she would have been placed with her. She also points out Katy's many favorable qualities, which make her home a suitable placement.

The juvenile court acknowledged that Katy requested placement of C.G. in April 2014, but was not an appropriate relative placement at the dispositional hearing in June. By the time Katy was approved for placement, the case had advanced to the six-month review hearing and there was no need to find a new placement for C.G. Therefore, the relative placement preference did not apply. Further, C.G. had been in the care of Mr. and Mrs. P. for six months and the juvenile court did not believe it was in her "best interest to be moved from the only home and caretakers that [she had] known from the time that she was born."

"The overriding concern of dependency proceedings ... is not the interest of extended family members but the interest of the child. '[R]egardless of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that placement with a relative be rejected.' [Citation.] ... The passage of time is a significant factor in a child's life; the longer a successful placement continues, the more important the child's need for continuity and stability becomes in the evaluation of her best interests." (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855.)

The juvenile court in this case considered the question of placing C.G. with Katy and her family and essentially found her home to be a suitable one. Nevertheless, the court determined that a change in placement was not in C.G.'s best interest, in view of



her medical fragility and established relationship with Mr. and Mrs. P. We see no abuse of discretion or misapplication of the statute in the court's conclusion.

We find no error and deny the petition.

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.